

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

JUSTIN ANDREW LARDIE,

Defendant-Appellant.

UNPUBLISHED

March 21, 2006

No. 258075

Leelanau Circuit Court

LC No. 04-001402-FH

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of larceny of \$1,000 or more, but less than \$20,000, MCL 750.356(3)(a). He was sentenced to three years' probation with three months in jail and to pay \$3,527.68 in restitution. Defendant appeals as of right. We affirm. This case is being decided without oral argument under MCR 7.214(E).

Defendant first argues that the order of restitution was inappropriate, and if the order itself was appropriate, the amount of restitution being based on the theft of three laptop computers rather than only the one he was convicted of stealing was still in error. We disagree.

We review an order of restitution for an abuse of discretion *In re McEvoy*, 267 Mich App 55, 59; 704 NW2d 78 (2005), but review the factual determination of the amount of restitution ordered for clear error. *People v Zahn*, 234 Mich App 438, 445; 594 NW2d 120 (1999); MCR 2.613(C).

At trial it was undisputed that defendant had possessed one of three laptops his employer was missing. All three laptops were stored in the same location at his workplace. Defendant alleged that he purchased the laptop found in his possession from a friend on or around January 13, 2004. Defendant acknowledged using that laptop to connect to his employer's computer network. That computer network could record the time and date at which any computer logged onto the network. The employer regularly identified its computers to the network with department names when assigning employees laptop computers for business use. Some time after the laptops were discovered missing on December 19, 2003, the employer became aware of a "phantom" computer logging onto the network that identified itself only as a Dell laptop, the brand of computer the employer was missing.

A subsequent recording of computer activity identified five specific times and dates when this computer accessed the network. Defendant was the only employee who was on the job at all five times. The employer photocopied the bottom of the laptop defendant brought to work and found that the serial number on the computer matched the serial number of one of its missing laptops. Defendant's general manager confronted defendant about using a laptop at work. Defendant stated that he did not have a Dell laptop, which was the brand of laptops missing from his employer. The brand of laptops was not publicly known at the company. At that time, defendant also claimed that he had borrowed the laptop from someone else.

When defendant went to the police, he proffered a different account of how he acquired the laptop. He claimed that he purchased the laptop in cash from a friend at a restaurant, but had no witnesses to the sale and no receipt from the exchange. Defendant testified that he never brought his friend to work and that the friend would not have been able to enter the workplace because of its "fairly tight security." Defendant was unsure of his friend's last name, but testified that the friend was selling many of his belongings because he was planning to move to San Francisco.

The order of restitution was properly granted based on the theft of all three laptop computers as it was reasonable for the trial court to conclude that more likely than not defendant stole all of them. The amount of restitution must be proven by a preponderance of evidence. *People v Byard*, 265 Mich App 510, 513; 696 NW2d 783 (2005). Given the evidence offered at trial, it was reasonable to conclude that defendant more likely than not stole all of the laptops when they were all stored in the same location, rather than that defendant stole one laptop while someone else stole the other laptops. The employer's losses for the other laptops can be attributed, by a preponderance of the evidence, to defendant's course of conduct, even if the loss of all three laptops was not the factual foundation for defendant's criminal charges. *People v Gahan*, 456 Mich 264, 272; 571 NW2d 503 (1997). Thus, we conclude the trial court's factual finding for purposes of the restitution award that defendant stole all three laptops was not clearly erroneous. *Zahn, supra* at 445. Accordingly, the trial court did not abuse its discretion, *McEvoy, supra* at 59, by awarding restitution for the loss of all three computers.

Defendant also argues that the evidence presented at trial was insufficient to convict him, and that his conviction is against the great weight of the evidence. We review de novo claims of insufficient evidence. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). When reviewing sufficiency claims, we "view[] the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime were proved beyond reasonable doubt." *People v Moorner*, 262 Mich App 64, 76-77; 683 NW2d 736 (2004). Defendant's claim that his conviction was against the great weight of the evidence was not preserved, because defendant did not move for a new trial on this ground below. *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). We review an unpreserved claim that a conviction was against the great weight of the evidence for plain error affecting a defendant's substantial rights. *Id.*

Defendant's claim that insufficient evidence was presented to support his conviction rests on his assertion that he purchased the laptop on or around January 13, 2004. However, there was testimony that before defendant claimed to have purchased the laptop, he insisted that the laptop was borrowed from someone else. Further, circumstantial evidence and reasonable inferences that derive from such evidence may constitute sufficient proof of all elements of a crime.

Moorer, supra at 77. We conclude that the circumstantial evidence introduced at trial and the reasonable inferences that could be drawn from that evidence were sufficient for the jury to find that defendant stole the laptop. His employer's computer network recorded activity from an unassigned laptop as early as January 10, 2004, before defendant's alleged purchase date of January 13, 2004. It was determined that defendant was the only employee at work on all five occasions that the computer had logged the unassigned laptop onto the network. In addition, defendant was in possession of his employer's missing laptop and had divulged the brand name of the laptops his employer was missing before that information had been made public at the company. We resolve evidentiary conflicts in favor of the prosecution. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001), and questions of credibility should be left for the trier of fact to determine. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). The trier of fact rejected defendant's theory, and we will not alter that determination. Also, given the strong evidence in favor of defendant's conviction, he has failed to show that his conviction was against the great weight of the evidence, let alone plain error affecting his substantial rights.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra